IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1045/2005

Decided on. 19.9.2007

State of H.P. and another. **…Petitioners.**

Versus

Dina Nath and another. **…Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No.*

For the petitioners : **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocate Generals.**

For the respondents **Mr. Vijay Chaudhary, Advocate vice Mr. Vinod Thakur, Advocate.**

Rajiv Sharma, J.

A challenge has been laid to the award dated 23.2.2005 passed by the Labour Court-cum-Industrial Tribunal, Dharamshala in reference No. 22/2001.

The State Government after the failure of conciliation proceedings received the communication from the Labour Officer-cum-Conciliation Officer, Mandi on 4.1.2000 and consequently vide reference No. 11-23/83 dated 14.2.2001, the reference was made to the Labour Court-cum-Industrial Tribunal, Dharamshala by the State Government which reads thus:

> **"Whether termination of services of Shri Dina Nath, ex-daily wages Beldar by the Executive Engineer, Irrigation and Public Health, Division Mandi, District Mandi, H.P. without any notice, charge-sheet, enquiry and without compliance of section 25 (F) of the Industrial Disputes Act, 1947, as alleged, is legal and**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

justified, if no, to what relief of service benefits and amount of compensation, Shri Dina Nath is entitled?"

In sequel to the reference made, the respondent No.1 (hereinafter referred to as the workman for convenience sake) filed his statement of claim before the Labour Court primarily contending that he was engaged as daily wage Beldar with effect from October, 1995 and was retrenched in the month of January, 1997 without following the mandatory provisions of law. He also contended that persons junior to him were retained by the employer while retrenching him in the month of January, 1997 in violation of section 25-G of the Industrial Disputes Act, 1947. The employer had contested the claim and denied that the workman had completed 240 days preceding his retrenchment in a block of 12 calendar months. The employer had also denied that persons junior to him were retained while retrenching him in the month of January, 1997. The Labour Court on the basis of the evidence led by the parties had answered the reference in affirmative by directing the reinstatement of the workman with 50% back wages as well as seniority.

The learned Deputy Advocate General had strenuously argued that the Labour Court had exceeded its jurisdiction by answering the reference in affirmative by misreading the evidence available on record. She also contended that the workman could not be granted back wages as directed by the Labour Court since no material was placed on record by the workman to the effect that he was not gainfully employed after his retrenchment in the month of January, 1997. She further contended that there was inordinate delay in raising the industrial dispute by the workman.

Mr. Vijay Chaudhary, Advocate vice Mr. Vinod Thakur, Advocate had supported the award dated 23.2.2005.

I have herd the learned counsel for the parties and perused the record.

The workman was engaged as daily wage Beldar in the month of October, 1995. He discharged his duties till January 1997. He had appeared as PW-1 before the Labour Court and categorically stated that employer had not permitted him to complete 240 days by giving him fictional breaks and persons junior to him, namely, Tilak Raj and Hema Malini were retained while retrenching him in the month of January, 1997. He also testified before the Labour Court that neither any notice nor any retrenchment compensation was paid to him at the time of his retrenchment. Sh. M.L. Gupta, had appeared as RW-1 on behalf of the employer. He stated that the workman had left the job at his own and the services of the workman were never terminated. In his cross-examination, Mr. M.L. Gupta had admitted that no notice was given to the workman to resume his duties and he also admitted that the department was required to maintain the seniority list of the workman, but no seniority list was placed on record. He was equally ignorant whether new recruitment has taken place in the division after the retrenchment of the workman. He was equally ignorant about the intentional notional breaks given to the workman to prevent him from completing 240 days. The Labour Court on the basis of the statement of PW-1 as well as RW-1 had come to a just conclusion that the workman was prevented from completing 240 days by giving him fictional breaks and accordingly the finding recorded by the Labour Court that the dis-engagement of the workman was in violation of section 25-F of the Industrial Disputes Act, 1947 is upheld.

Now, this court has to consider the plea of violation of section 25-G of the Industrial Disputes Act, 1947 by the employer. PW-1 has categorically testified before the Labour Court that persons, namely, Tilak

Raj and Hema Malini were retained while retrenching him in the month of January 1997. The statement made by the workman was not rebutted by the employer by leading any cogent evidence. Accordingly it is held that the retrenchment of the workman was also in violation of section 25-G of the Industrial Disputes Act, 1947.

The plea of the learned Deputy Advocate General that it was a case of abandonment and not retrenchment is also untenable. Sh. M.L. Gupta (RW-1) had admitted before the Labour Court that no notice was ever issued to the workman to rejoin his duties. No entry to this effect was ever made as per the statement of Mr. M.L. Gupta in the record. The plea of abandonment is a plea of fact and the same is required to be proved in accordance with law.

The plea raised by the learned Deputy Advocate General that there was delay in raising the industrial dispute cannot be given any weightage for the reasons that the workman was retrenched in the month January 1997. He had raised the demand and thereafter conciliation proceedings were held by the Conciliation Officer, Mandi. The Conciliation Officer had sent the failure report of the conciliation proceedings to the State Government on 4.1.2000. The reference was made by the State Government on 14.2.2001. Thus, there was no inordinate delay in raising industrial dispute by the workman.

The Court has now to consider whether the Labour Court could not direct the reinstatement with 50% back wages and seniority. The workman has not placed any material on record to prove that he was not gainfully employed any where after his retrenchment in the month of January, 1997. As per the industrial law, if the retrenchment is bad, the workman is entitled to benefit of back-wages but since the workman has not brought any material on record to the effect that he was not gainfully

employed anywhere after his retrenchment, therefore, he could only be entitled to 25% back wages with seniority.

Accordingly the award is modified to the extent that the reinstatement of the workman is upheld with seniority, but he will only be entitled to 25% back wages.

Consequently, the writ petition is partly allowed in view of the observations made hereinabove. There shall be no order as to costs.

(Rajiv Sharma), Judge

September 19, 2007
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